

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:23-CV-00026-KDB-SCR**

LINEAGE LOGISTICS, LLC,

Plaintiffs,

v.

**PRIMUS BUILDERS, INC., ET
AL.,**

Defendants.

ORDER

This matter is before the Court on Plaintiff's Motion to Remand. (Doc. No. 9). The parties agree this Court lacks subject matter jurisdiction over Plaintiff's claims and that this case should be remanded to the General Court of Justice, Superior Court Division, Iredell County, North Carolina. However, the parties disagree on whether Plaintiff Lineage Logistics, LLC ("Lineage") is entitled to an award of costs and attorney's fees pursuant to 28 U.S.C. § 1447(c). While it is a relatively close question because Defendants could certainly have consented to the remand earlier in these proceedings, the Court finds that each party should bear their own fees and costs and therefore will decline Plaintiff's request.

Procedural and Factual Background

Lineage filed suit in the Superior Court Division of Iredell County, North Carolina against multiple defendants, including Primus Builders, Inc. ("Primus"), and P3 Advantage, Inc. ("P3"). *See* Doc. No. 1-2. Primus and P3 – collectively referred to as the "Removing Defendants" – removed the lawsuit to this Court based solely on diversity jurisdiction. *See* Notice of Removal, Doc. No. 1, ¶ 8. Lineage filed a motion to remand, arguing that diversity jurisdiction was absent,

because at least one of the owning LLC's members included an individual natural person (Greg Bryan) who is a citizen of Georgia. *See Memorandum in Support of Motion to Remand*, Doc. No. 9-1; Lam Declaration, Doc. No. 9-4, ¶¶ 5-7. The Removing Defendants are Georgia citizens. *See Notice of Remand*, Doc. No. 1, ¶¶ 4-5.

In a "Text-Only Order," issued on April 20, 2023, the Court directed Lineage to file a supplemental brief addressing in detail the citizenship of its members. Lineage did so, filing its "Supplemental Brief in Support of Motion to Remand and for Attorney's Fees," on May 4, 2023. *See Doc. No. 13*. The Removing Defendants filed a response on May 10, 2023 (Doc. No. 16), conceding that diversity jurisdiction was absent, and consenting to Lineage's Motion to Remand. *Id.*

Discussion

A. Motion to Remand

"If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C § 1447(c). In this matter, Defendants consent to Plaintiff's Motion to Remand based on the determination that the diversity requirements of 28 U.S.C. § 1332(a) cannot be met in this action. Because there is no question of federal law between Plaintiff and the Defendants and because no diversity jurisdiction exists between them, this Court must remand this matter to Iredell County Superior Court.

B. Motion for Attorneys' Fees

"An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c). However, the Court will exercise its discretion to decline to award attorneys' fees and costs to the Plaintiff. While Defendant probably should have consented to the remand sooner, based on the Court's Order

requiring Plaintiff to provide additional documentation of the residence of the LLC members, the Court finds that Defendants did not lack a reasonable basis for failing to consent to a remand prior to production of that evidence. Accordingly, the Court will deny the request for attorneys' fees.

NOW THEREFORE IT IS ORDERED THAT:

1. Defendant's Plaintiff's Motion to Remand (Doc. No. 9) is **GRANTED**;
2. This case is **REMANDED** pursuant to 28 U.S.C § 1447(c) to the General Court of Justice, Superior Court Division for the County of Iredell, North Carolina, for further proceedings;
3. Plaintiff's request for an award of attorneys' fees and costs is **DENIED**; and
4. The clerk is directed to close this case and to transmit a certified copy of this order to the clerk of the General Court of Justice, Superior Court Division, Iredell County, North Carolina.

SO ORDERED ADJUDGED AND DECREED.

Signed: May 18, 2023



Kenneth D. Bell
United States District Judge

